



DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Parts 259, 260, and 399

[Docket No. DOT-OST-2022-0089]

RIN 2105-AF04

Airline Ticket Refunds and Consumer Protections; Public Hearing

AGENCY: Office of the Secretary (OST), U.S. Department of Transportation (DOT).

ACTION: Public hearing.

SUMMARY: DOT is announcing a virtual public hearing pursuant on certain issues related to the U.S. Department of Transportation's Notice of Proposed Rulemaking on Airline Ticket Refunds and Consumer Protections.

DATES: The virtual hearing will be held on March 14, 2023, from 1 p.m. to 5 p.m. Eastern Time. The hearing is open to the public, subject to any technical and/or capacity limitations. Requests to attend the hearing must be submitted to

https://usdot.zoomgov.com/webinar/register/WN_u2RfGmWTSICqQVUyz9TAXA. We encourage interested parties to register by Thursday, March 9, 2023. Communication Access Real-time Translation (CART) and sign language interpretation will be provided during the hearing. Requests for additional accommodations because of a disability must be received at Cristina.Draguta@dot.gov by Thursday, March 9, 2023.

ADDRESSES: The virtual hearing will be open to the public and held via the Zoom Webinar Platform. Virtual attendance information will be provided upon registration. An agenda will be available on the Department's Office of Aviation Consumer Protection website at

<https://www.transportation.gov/airconsumer/latest-news> in advance of the hearing.

FOR FURTHER INFORMATION CONTACT: To register and attend this virtual hearing, please use the link: https://usdot.zoomgov.com/webinar/register/WN_u2RfGmWTSICqQVUyz9TAXA.

Attendance is open to the public subject to any technical and/or capacity limitations. For further information, please contact Cristina Draguta, Attorney-Advisor, by email at Cristina.Draguta@dot.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On August 22, 2022, the U.S. Department of Transportation (DOT or Department) published in the *Federal Register* a notice of proposed rulemaking (NPRM) that proposes to codify its longstanding interpretation that it is an unfair business practice for a U.S. air carrier, a foreign air carrier, or a ticket agent to refuse to provide requested refunds to consumers when a carrier has cancelled or made a significant change to a scheduled flight to, from, or within the United States, and consumers found the alternative transportation offered by the carrier or the ticket agent to be unacceptable (87 FR 51550). The NPRM proposes to define, for the first time, the terms significant change and cancellation. It would also require U.S. and foreign airlines and ticket agents inform consumers that they are entitled to a refund if that is the case before making an offer for travel credits, vouchers, or other compensation in lieu of refunds. The Department further proposes to require that U.S. and foreign air carriers and ticket agents provide non-expiring travel vouchers or credits to consumers holding non-refundable tickets for scheduled flights to, from, or within the United States who are unable to travel as scheduled in certain circumstances related to a serious communicable disease. If the carrier or ticket agent received significant financial assistance from the government because of a public health emergency, the Department proposes to require U.S. and foreign air carriers and ticket agents provide refunds, in lieu of non-expiring travel vouchers or credits. The NPRM proposes to allow carriers and ticket agents to require consumers provide evidence to support their assertion of entitlement to a travel voucher, credit, or refund. The comment period for the NPRM closed on December 16, 2022.

On December 16, 2022, Airlines for America (A4A) and International Air Transport Association (IATA) (collectively “Petitioners”) filed a petition to request a public hearing on the NPRM pursuant to

the Department's regulation on rulemakings relating to unfair and deceptive practices, 14 CFR 399.75.¹ The Petitioners specifically raise three issues regarding the NPRM and request that these issues be addressed in the hearing. For each issue, Petitioners argue that it meets the threshold set forth in section 399.75 for granting a public hearing because the underlying proposed rule depends on conclusions concerning one or more specific scientific, technical, economic, or other factual issues that are genuinely in dispute; because the ordinary public comment process is unlikely to provide an adequate examination of the issue to permit a fully informed judgement; because the resolution of the disputed factual issues would likely have a material effect on the costs and benefits of the proposed rule; because the requested hearing on the issue would advance the consideration of the proposed rule and the General Counsel's ability to make the rulemaking determinations required by the Department's regulation; and because granting the petition would not unduly delay the rulemaking.

The Department has carefully considered the petition for a public hearing consistent with 14 CFR 399.75 and is granting a public hearing to afford Petitioners and other stakeholders an opportunity, in addition to the public comment process afforded by the NPRM, to present factual issues that they believe are pertinent to the Department's decision on the rulemaking. The scope of the hearing is limited to the factual issues specified in this notice.

The Department's proposals are set forth in the August 2022 NPRM. The three issues identified by Petitioners concerning the Department's NPRM and on which they request a hearing are discussed in more detail in their petition for rehearing. The information the Department is requesting during the hearing on these issues is summarized below.

Issue 1: Whether Consumers Can Make Reasonable Self-Determinations Regarding Contracting a Serious Communicable Disease.

The Department requests interested parties to provide the following information to the extent it has not been provided in any written comments already submitted to the Docket:

¹ See, *Airlines for America and the International Air Transport Association Petition for Hearing*, <https://www.regulations.gov/comment/DOT-OST-2022-0089-5296>.

- Information on airlines' and ticket agents' current practice in handling consumers' requests for the cancellation or postponement of travel due to contracting a serious communicable disease, including a description of the procedure to review the requests, information on the evidentiary documentation required, if any, and the accommodations provided in response to legitimate claims (e.g., refunds, credits, rebooking);
- Data on the volume of such requests, both pre- and during the COVID-19 public health emergency;
- Information on the volume and percentage of requests from consumers that are considered fraudulent;
- Information on the volume and percentage of requests received that are not considered fraudulent but nonetheless rejected due to being based on "unreasonable self-determination;"
- Data on the costs to airlines and ticket agents to verify consumers' claims regarding contracting a serious communicable disease;
- Information on the type of diseases claimed by consumers as a "serious communicable disease" based on which the consumers are requesting to cancel or postpone travel; and
- Any other information pertinent to the Department's determination on this proposal.

Issue 2: Whether the Documentation Requirement (Medical Attestation and/or Public Health Guidance) Is Sufficient to Prevent Fraud.

The Department welcomes the following information during the hearing, to the extent it has not been provided in any written comments already submitted to the Docket:

- Information on whether medical attestations currently provided to airlines from consumers seeking to cancel or postpone travel are primarily based on consumers' self-assessments, the medical professionals' assessments, or a combination of both;
- Information on the types of medical professionals who are currently providing the attestations that are accepted by airlines and ticket agents;

- Information on the types of public health authority-issued guidance that are currently affecting air travel;
- Information on airlines' validation of medical attestations, including the procedures, the volume, and the costs associated with the validation; and
- Any other information pertinent to the Department's determination on this proposal.

Issue 3: How to Determine Whether a Downgrade of Amenities or Travel Experiences Qualifies as a "Significant Change of Flight Itinerary."

The Department requests that interested parties provide information on whether there are certain types of amenity changes that should be considered "significant" changes that would entitle a consumer to a refund and if so, whether the determination should be made categorically or by airlines on a case-by-case basis. The Department also requests information on how different airline operational and pricing models affect onboard amenities and travel experiences, and subsequently affect consumer expectations. In addition, the Department welcomes any other new information pertinent to the Department's determination on this proposal.

II. Agenda, Hearing Officer, and Post-Hearing Actions

During the March 14, 2023, hearing, the Department will hear information from the public on the three subjects described above. The Department's tentative positions on these subjects are articulated in the NPRM. The Department does not expect to provide further summary or explanation on its positions at the hearing.

The Department is appointing Blane Workie, Assistant General Counsel, Office of Aviation Consumer Protection, as the Hearing Officer presiding over the hearing. The Department's regulations at 14 CFR 399.75 specify that the General Counsel shall arrange for a hearing officer to preside over the hearing. The regulations further provide that after the hearing process is complete, the General Counsel must consider the record of the hearing and make a reasoned determination whether to terminate the rulemaking, proceed with the rulemaking as proposed, or modify the proposed rule. The regulations further require the General Counsel to explain, in an appropriate

rulemaking document published in the *Federal Register*, the rationale for the post-hearing decision made by the General Counsel. The rationale for the post-hearing decision made by the General Counsel will be explained in any final rule or other appropriate rulemaking document issued by the Department for this action.

III. Public Participation

The March 14, 2023, hearing will begin at 1:00 p.m. EDT, and the Department will provide time for opening remarks by the Hearing Officer. The meeting will then transition to public comments and presentations. Any oral comments presented should be limited to the subjects described in this Notice and be brief so all participants will have an opportunity to speak. Depending on the volume of requests for oral comments that we receive and the time available, we may be able to accommodate additional comments and/or presentations that speakers wish to add. Individual members of the public who wish to present oral comments must notify the Department of Transportation, no later than Thursday, March 9 via email at clerece.kroha@dot.gov that they wish to present oral comments. The email should (1) identify specific subject(s) on which you wish to provide comments; and (2) state the organization or entity you are representing or that you are speaking as a member of the public. All written materials (e.g., PowerPoint presentations) presented at the hearing will be made part of the meeting's record.

Consistent with the requirement of 14 CFR 399.75, the Department plans to reopen the comment period for this rulemaking on March 14, 2023, the date of the hearing, and the comment period will remain open for seven (7) days, closing on March 21, 2023. Interested parties who wish to file statements or comments that are specifically related to the subject(s) discussed at the hearing may submit their written comments electronically to the NPRM Docket (DOT-OST-2022-0089).

After the hearing and after the record of the hearing is closed, the hearing officer will place on the rulemaking docket minutes of the hearing reflecting the evidence and arguments presented on the issues.

IV. Viewing Documents

Documents associated with the NPRM on Airline Ticket Refunds and Consumer Protections may be accessed in the rulemaking Docket (DOT-OST-2022-0089). Dockets may be accessed at <https://www.regulations.gov>. After entering the relevant docket number click the link to “Open Docket Folder” and choose the document to review.

Signed in Washington, D.C., on this 28th day of February 2023.

John E. Putnam,
General Counsel,
U.S. Department of Transportation
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